

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

LEA MARQUEZ PETERSON- CHAIRWOMAN

SANDRA D. KENNEDY

JUSTIN OLSON

ANNA TOVAR

JIM O'CONNOR

IN THE MATTER OF IMPACT OF
THE CLOSURES OF FOSSIL-BASED
GENERATION PLANT ON IMPACTED
COMMUNITIES

) DOCKET NO. E-00000A-21-0010

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**THE NAVAJO NATION'S
RESPONSE TO RUCO'S
COMMENTS AND
RECOMMENDATIONS**

The Navajo Nation ("Nation") with other parties filed its recommendations for this Generic Proceeding on May 31, 2022. The Nation nevertheless finds it necessary to respond to the Residential Utility Consumers' Office ("RUCO") July 15 filing as it includes material inaccuracies, mischaracterizes the Coal Community Transition ("CCT") agreement between the Nation and Arizona Public Service Company ("APS"), and outright ignores significant portions of the CCT discussion to date. This Response does not address every issue in the RUCO filing, but it focuses on the most egregious elements.

Throughout this process and still today, the Nation appreciates the consideration that the Arizona Corporation Commission ("Commission") and its Staff have given to the CCT issue. The Nation continues to ask the Commission to approve the APS-Nation CCT agreement in its entirety as it represents reasonable compensation for the costs caused by APS's coal generation on and near the Nation and for the costs caused by the early retirement of that generation.

1 **I. The Commission Has Approved Portions of the APS-Nation CCT and**
2 **Continues to Consider Other Portions.**

3 The July 15 RUCO filing is factually incorrect in its statement that “[t]he APS agreement
4 with the Nation was rejected by the Commission.” Quite the opposite occurred, and the APS-
5 Nation CCT has been a key point of discussion in this Generic Proceeding. As indication that
6 the Commission did not “reject” the APS-Nation CCT, Decision No. 78317 approved material
7 portions of the APS-Nation CCT.¹ (See Decision No. 78317 at 172-73). The Commission further
8 clarified:

9 The Commission's *approval* of the assistance set forth above is not intended
10 to establish, and shall not be interpreted as establishing, the entirety of
11 APS's transition assistance obligation to the Nation, the Tribe, or the Navajo
12 County Communities. Nor should it be interpreted as definitively
13 establishing the limits of the transition assistance for which APS may
14 ultimately obtain recovery from customers. The Commission considers the
15 Generic Transition Docket to be an appropriate venue to flesh out additional
16 information concerning APS's and other utilities' equitable obligations to
17 coal impacted communities and the extent to which those obligations should
18 be covered by customer as opposed to shareholder funds.

19 ***

20 If the Generic Transition Docket identifies *additional transition assistance*
21 that should be provided to the Nation or the Tribe, and APS desires
22 authorization to recover from its customers the costs of this transition
23 assistance, APS shall file an application, in this docket [the APS rate case],
24 requesting such recovery. The Commission will hold open this docket for a
25 period of 12 months after the effective date of the decision herein for APS
26 to file such a request. If no such request is filed within that time, APS may
27 raise the issue in its next rate case.

 Decision No. 78317 at 173-74. (emphasis added).

¹ Elements of the APS-Nation CCT approved in Decision No. 78317 include a partial payment of the financial components of the APS-Nation CCT through rates, job redeployment from the closing coal plants, improved line extension policies, and a census of unserved buildings for possible electrification.

1 The Commission clearly anticipated discussion of the remaining components of the APS-
2 Nation CCT in this Generic Docket. The Nation has actively participated in the work sessions
3 in this Generic Docket, consistent with Decision No. 78317, and continues to advocate for the
4 prompt approval of the APS-Nation CCT. The rate components of the APS-Nation CCT likely
5 will require action with an APS rate case, again consistent with Decision No. 78317; but the
6 quantification of the APS-Nation CCT already been identified by the Commission as “formulaic”
7 and “objective data.” (See Decision No. 78317 at 170). APS has estimated the APS-Nation CCT
8 to cause a \$0.58/month effect on the average retail bill. (See APS July 15, 2022 filing). It is
9 simply incorrect to contend that the Commission “rejected” the APS-Nation CCT. This Generic
10 Docket is a clear extension of the Commission’s consideration of the APS-Nation CCT and other
11 coal community issues.
12

13 **II. The APS-Nation CCT is Analogous to Commission-Approved Regulatory**
14 **Asset Treatment Described in Decision No. 78317.**

15 The record from Docket No. E-01345A-19-0236 (the APS rate case) related to the APS-
16 Nation CCT has been carried into this Generic Proceeding, and the record from the APS rate case
17 (including Decision No. 78317) offers clear evidence that the APS-Nation CCT is consistent with
18 other costs that should be included in cost of service ratemaking. Further, the record from the
19 APS rate case, as noted in Decision No. 78317, includes a “formulaic process” and “objective
20 data” underlying the funding levels in the APS-Nation CCT. (See Decision No. 78317 at 170).
21 The size of the APS-Nation CCT is known and verifiable.
22

23 The Nation notes that the APS-Nation CCT offers an attribute that the RUCO filing
24 seeks—it is finite and there is no component that is not memorialized in the agreement. Even
25 RUCO’s filing recognizes this by referencing the Staff’s notes regarding the April 14, 2022
26 workshop where this finality was discussed. As plainly explained in the Nation’s May 31 filing
27

1 (a copy of which is attached hereto), the Nation recommends the prompt approval of the known,
2 quantifiable, and exhaustively vetted APS-Nation CCT and continuation of discussions regarding
3 other coal-affected communities, including Springerville and others, where the discussion has
4 not been as long-lasting.

5 The logic supporting inclusion of the APS-Nation CCT in rates largely mirrors the logic
6 used by the Commission in Decision No. 78317 regarding the APS regulatory assets created by
7 the early coal plant closures. In Decision No. 78317, the Commission approved APS's own cost
8 recovery associated with the early retirement of Navajo Generating Station ("NGS") and Cholla
9 Power Plant ("Cholla").² Both Cholla and NGS underlie the APS-Nation CCT as both are on or
10 near the Nation, and APS identified its own unrecovered costs for both plants as a result of their
11 early retirements. (*See* Decision No. 78317 at 198). In the APS rate case, RUCO acknowledged
12 APS's right to receive compensation for the unrecovered costs caused by the early retirements
13 and recommended "that stranded costs should be eliminated as soon as 'practically possible,'" *i.e.*,
14 APS should receive prompt payment through retail rates of these costs tied to the early
15 retirement. (*See* Decision No. 78317 at 199). The Commission approved APS's recovery of
16 these unrecovered costs associated with the early closures, using a method previously applied in
17 a Tucson Electric Power case. (*See* Decision No. 78317 at 199).

18 RUCO's argument that there should be no rate recovery for the APS-Nation CCT is
19 inconsistent with RUCO's argument that APS is entitled to recover through rates "as soon as
20 practically possible" its unrecovered costs tied to early coal plant closure of the same power
21 plants. RUCO contends that no part of the APS-Nation CCT should be recovered through rates
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26 ² RUCO's July 15 filing does not recognize the early closures of NGS or Cholla or their locations relative to the
27 Nation.

1 because the retirement of these coal plants was driven by APS's "unilateral decision and
2 unexpected announcement" (RUCO July 15 filing at 4). These are the same early retirement
3 decisions and announcements as underlie the unrecovered costs that RUCO said APS should
4 recover as soon as "practically possible." The cost causation principles for the unrecovered costs
5 and the APS-Nation CCT are the same too—but for the early retirement of the coal plants, neither
6 the unrecovered costs nor the APS-Nation CCT would be before the Commission for rate
7 recovery.
8

9 Curiously, RUCO has endorsed the speedy recovery of unrecovered costs for the investor-
10 owned utility but now objects to a similar recovery for the Nation and similar communities
11 affected by the same early plant retirements. Even more curious, RUCO has endorsed a
12 condition-free process for the investor-owned utility's recovery of unrecovered costs related to
13 early plant closures, but now seeks to impose a potentially onerous cost-benefit and accounting
14 process for the APS-Nation CCT if approved (RUCO July 15 filing at 5) as it did not seek any
15 conditions related to the utility's unrecovered costs related with the same early plant closures. In
16 the APS rate case, RUCO's support for including unrecovered costs in rates "as soon as
17 practically possible" did not include any conditions on the investor-owned utility at all. RUCO
18 has offered no explanation for why the Nation should be subjected to a potentially onerous
19 process when it recommended no conditions or process at all and for quick payment to the utility
20 for its early closure costs.
21

22 **III. A Cost-Causation or "But For" Analysis should be Applied to the APS-** 23 **Nation CCT.**

24 Consistent with the cost causation comparison to APS's permitted inclusion of
25 unrecovered costs in rates described above, the Nation has consistently asked the Commission to
26 apply traditional cost causation principles in its assessment of the APS-Nation CCT. The
27

1 attached May 31 Nation filing listed costs incurred by the Nation as a result of coal plants and
2 their early retirement. The cost causation principles were applied throughout the May 31 filing
3 and the Nation's other comments in this Generic Docket to show the connection between the
4 cause (*i.e.*, the coal plants and closures) and the effects. One of the identified effects of the early
5 plant closures is worker displacement. The causal connection between the early retirements and
6 worker displacement is self-evident; without the early retirement, the worker displacement would
7 not have occurred.
8

9 Decision No. 78317 ordered APS to offer job redeployment for affected workers, but for
10 various reasons, some people have not been able to move from their communities as part of that
11 redeployment. Just as APS's redeployment of workers from the closing coal plants has been
12 approved by the Commission for inclusion in rates, so too should the APS-Nation CCT amounts
13 used for worker displacement for those at the same plants who simply cannot move away. The
14 worker displacement issue has a clear relationship to the early plant closures and is scoped only
15 to address those whose jobs are affected by the closures. It is not part of any more general
16 worker assistance program.
17

18 In spite of this clear cost causation nexus, RUCO characterizes assistance for the
19 displaced power plant workers as a social cause. (*See* RUCO July 15 filing at 9). Similarly,
20 RUCO criticizes the idea of repurposing water infrastructure related to NGS in order to improve
21 community access to water. (*Id.*) Regardless, the nexus between the closing coal plant and the
22 proposal is clear—rather than having the water infrastructure removed during the
23 decommissioning process, moneys would be used to make those facilities useful.
24

25 The RUCO argument regarding the lack of expenditure on cost estimates seems to ignore
26 the fundamental issue that the affected communities cannot reasonably spend significant sums
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1 on preliminary engineering studies, etc. when the Commission has not yet approved the funds in
2 the APS-Nation CCT. (*See* RUCO July 15 filing at 5). RUCO effectively is asking the Nation
3 to make an enormous gamble—spend untold amounts on experts and studies to create precise
4 cost estimates with the hope that the APS-Nation CCT *might* get approved. Aside of the fact that
5 such a risky expenditure with an expectation that funding will exist is imprudent, had the Nation
6 spent such sums, there is a real question of whether RUCO would then contend that the spending
7 was proof that the APS-Nation CCT was unneeded. The argument that significant sums should
8 be spent for the chance at receiving the APS-Nation CCT calls for an untenable Catch-22 for
9 affected communities.
10

11 In actuality, RUCO proposes a more onerous standard for cost recovery on the Nation
12 related to the early coal closures than would apply to an electric utility anywhere. Regulated
13 utilities are entitled to a reasonable opportunity to recover their prudently-incurred costs. (*FPC*
14 *v. Hope Natural Gas Co.* (“Hope”), 320 U.S. 591, 603 (1944)). RUCO would require the Nation
15 to incur the costs of various engineering and other studies to create estimates for the CCT-related
16 projects without a cost recovery mechanism for doing so. Consistent with *Hope*, a rate-regulated
17 utility would be allowed recovery of prudently-incurred expenses in pre-engineering and other
18 comparable studies. RUCO is similarly silent regarding the sources of funding for the ongoing
19 accounting and cost-benefit activities that it proposes. It appears that RUCO offers no rate-
20 related funding mechanism proposal of this burden on the Nation either. The RUCO proposal
21 has multiple unfunded mandates as prerequisites to receiving needed funding. While the Nation
22 obviously is not a rate-regulated utility, it is telling that RUCO’s recommendation is predicated
23 on a model where the Nation (and presumably other affected communities) should not be
24 afforded treatment at least as reasonable as that provided the State’s utilities.
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May 31, 2022

Elijah O. Abinah
Director
Utilities Division
1300 W. Washington Street
Phoenix, AZ 85007-2996

Re: In the Matter of Impact of the Closures of Fossil-Based Generation Plant on Impacted Communities (Docket No. E-00000A-21-0010)

Dear Mr. Abinah:

In response to the Arizona Corporation Commission (“ACC” or “Commission”) Staff’s May 10, 2022 memorandum, the Navajo Nation (“Navajo” or “Nation”), Tó Nizhóní Ání, Western Resource Advocates, Sierra Club-Grand Canyon Chapter, Southwest Energy Efficiency Project, San Juan Citizens Alliance, Western Clean Energy Campaign, and Black Mesa Trust (collectively, “Joint Advocates”) submit the following recommendations for Commission action and future steps related to Coal Community Transition (“CCT”).

The Joint Advocates strongly recommend that the Nation’s CCT with Arizona Public Service Company (“APS”) be approved in full as quickly as possible. Further, the Joint Advocates ask that the Commission adopt and approve all applicable elements of the Navajo-APS CCT to a Navajo CCT with Tucson Electric Power (“TEP”) on pro-rated basis relative to the APS CCT.

1. Approve the Nation’s CCT Immediately.

- **The Record Related to the Nation’s CCT is Vast and Parties Have Had Ample Opportunity to Opine Upon It.**

The record supporting the Navajo-APS CCT is voluminous and already has been subject to significant review. The Commission began receiving testimony about the Navajo-APS CCT about a year and a half ago. No other CCT plan has been before the Commission as long or with as much evidence. As has been noted on several occasions, this Generic Docket has adopted the CCT-related record from the APS rate case¹ and the TEP rate case.² The Navajo-APS CCT is the only plan to date that has received agreement both from an affected community and a Commission-

¹ *In the Matter of the Application of Arizona Public Service Company for a Hearing to Determine the Fair Value of the Utility Property of the Company for Ratemaking Purposes, to Fix a Just and Reasonable Rate of Return Thereon, to Approve Rate Schedules Designed to Develop Such Return.* Docket No. E-01345A-19-0236.

² *In the Matter of the Application of Tucson Electric Power Company for the Establishment of Just and Reasonable Rates and Charges Designed to Realize a Reasonable Rate of Return on the Fair Value of the Properties of Tucson Electric Power Company Devoted to its Operations Throughout the State of Arizona and for Related Approvals.* Docket No. E-01933A-19-0028.

regulated utility, *i.e.*, currently there is nothing comparable to the Memorandum of Understanding (“MOU”) between APS and the Nation elsewhere in the Commission proceedings. Moreover, meaningful components of the Navajo-APS CCT already have been found to be in the statewide public interest and have been approved by the Commission.³ As such, the Navajo-APS CCT has been fully vetted and is ready for approval in its entirety.

- **The Navajo Nation’s CCT Directly Relates to Utilities’ Cost of Service, Making It Fit with Traditional Ratemaking Principles.**

While only to a limited degree and without firm commitment to an opinion, a handful of participants in the Generic Docket have questioned whether the Commission has authority to include costs in rates that do not directly relate to the generation, procurement, transmission, distribution, or retailing of electricity by Commission-regulated utilities. The Nation’s CCT does not require the Commission to address this question because, rather uniquely, *the Nation’s CCT directly relates to costs caused by the generation and procurement of electricity ultimately consumed by retail users in Arizona*. It is not reliant solely on the Commission’s permissive authority to promote public health and safety, but instead fits squarely under the Commission’s Constitutionally-conferred plenary authority related to rates and cost of service.⁴ The Nation’s “but for”/cost causation analysis of its CCT directly conforms with traditional cost of service ratemaking and appears to differ from some of the other CCT discussions in the Generic Docket in this respect. The Nation’s CCT is, in fact, a direct cost related to the operations and early retirement of coal plants that the Commission has approved in rate base for years.

The Nation has identified several ways that CCT funds could be used to mitigate the harms caused by the early retirement of coal plants. The Nation filed Comments Related to Commissioner Questions on April 20, 2022 (“Navajo Comments”). The Navajo Comments are attached to this recommendation and explain the “but for” concept that the Nation recommends applying to Commission-approved CCTs. The “but for” model matches compensation under a CCT with a corresponding cost associated with the provision of Commission-regulated electric service. For example, the Navajo Comments point to the need for additional remediation measures above and beyond the minimum levels that are addressed by the utility’s decommissioning obligations (which traditionally are included in rates), especially in instances in which the Nation

³ Decision No. 78317 at 173 (approving a portion of the Nation’s APS CCT and explaining that the immediate approval of only portions of the Nation’s APS CCT should not be construed as the entirety of the amount that ultimately should be approved or as the ceiling on the amount that should be recovered through rates); at 428 (noting as a conclusion of law that the Commission has jurisdiction over issues raised and resolved in the Decision).

⁴ The Arizona Supreme Court has concluded that the “Commission’s ratemaking authority under article 15, section 3 [of the Arizona Constitution] is plenary.” See *Johnson Utils., LLC v. Ariz. Corp. Comm’n*, 468 P. 3d 1176, 1182 (Ariz. 2020). “[T]he Commission has ‘full power’ to prescribe rules, regulations, and orders governing PSC rates, charges, and classifications.” *Id.* (emphasis added). “[T]he Arizona Constitution, by its terms, makes ratemaking the *exclusive responsibility of the Commission*; it cannot delegate this authority to another agency or branch of government.” *Id.* (emphasis added).

owns the land⁵ where the coal-fired power plant was sited.⁶ “But for” the Commission-regulated, rate-based generation at the site, the need for this environmental remediation of the site would not be needed for it to be repurposed following the early plant closure. Because the Navajo CCT relates directly to the sites where rate-regulated power generation occurred and the direct costs caused by those plants and their early retirement, it differs from more generalized economic development concerns for the region. It is not part of any social cause—it’s a settled amount to address the financial effects of the rate-based plants and the early retirement on the Nation.⁷ It is a cost of service.

- **The Nation’s CCT with APS Creates an Easily Applied Framework for a Nation-TEP CCT.**

The Commission and Staff have expressed a desire for consistent treatment among ACC-regulated utilities in approving CCTs.⁸ As discussed in the Generic Docket workshops, with basic arithmetic, the Commission can apply the \$/MW in the Navajo-APS CCT to establish a Navajo-TEP CCT that is proportional and therefore consistent. Applying the MOU, on a per megawatt basis, a proportional CCT between TEP and the Nation would total about \$19.6 million of which about \$16.5 million would be funded through rates over 10 years, *i.e.*, rates would contribute about \$1.6 million per year.⁹ The Nation recognizes that the Commission has authority over amounts recovered through rates but not over amounts derived from shareholder contributions.¹⁰ Consequently, this recommendation does not address any shareholder participation in a TEP-Navajo CCT.

Some components of the MOU do not fit practically for TEP and are not applicable. Specifically, the job redeployment is not applicable for the Nation’s CCT with TEP because TEP did not/does not employ workers at the relevant coal plants.¹¹ Likewise, because TEP’s retail service territory is not near the Nation, Tribal Electrification Commitments are not applicable.¹² However, the commitment to seek to procure renewable generating capacity on or near the Nation

⁵ The Nation owns the land at the Navajo Generating Station and Four Corners Power Plant sites.

⁶ *Cf.* Decision No. 78317 at 171 (recognizing that rates can and do recover depreciation expenses related to the power plant structure itself). The previously approved depreciation expense was not and is not designed to address remediation measures or costs caused by the power plant on others, which are addressed by the CCT.

⁷ *Cf.* Decision No. 78317 at 172 (recognizing that “the economic devastation” caused by the early coal-fired plant closures makes it “just and reasonable” for APS and its ratepayers to contribute to the CCT).

⁸ *See, e.g.*, Decision No. 78317 at 173-74 (stating that this Generic Docket should be used to “flesh out” “other utilities’ equitable obligations”).

⁹ TEP owns 110 MW of capacity in Four Corners Power Plant and 170 MW in San Juan Generating Station. APS’s capacity in the Four Corners Power Plant is included in the Nation’s APS CCT and PNM’s capacity in the San Juan Generating Station is included in computing PNM’s CCT as required in New Mexico. So, the TEP capacity in these plants logically applies for a TEP-Navajo CCT. TEP also owns 793 MW in the Springerville Power Plant but because it is not on or near the Nation, it is not included in the Nation’s CCT math. The Springerville capacity does not meet the “but for”/cost causation principles that overarch the Nation’s CCT because of the lack of proximity.

¹⁰ *See* Decision No. 78317 at 147.

¹¹ *Cf.* Decision No. 78317 at 146 (discussing job redeployment).

¹² *Cf.* Decision No. 78317 at 144 (discussing Tribal Electrification).

should apply to TEP as it does APS.¹³ This pro-ration method creates an equitable and consistent treatment of Commission-regulated utilities and mitigates concerns that one utility might shoulder a disproportionate share of the CCT to the benefit of another utility because it ensures that TEP and APS participate at the same \$/MW level as one another.

- **The Rate Impact of the Nation's CCT is Knowable, Finite, and De Minimis.**

As was noted in the workshops in this Generic Docket, the ratepayer impact of the Nation's CCT is tiny. Even naysayers seemed to concede this. The Nation's APS CCT would cause an increase of less than 0.3% on the average monthly bill. In other words, the Nation's APS CCT would cause an increase on the average monthly bill of only about \$0.56. To the extent that Staff or others are concerned that the CCT might grow too large or become unwieldy, the well-defined, fixed CCT agreed upon by the Nation and APS does not suffer those traits. Quite the opposite, its impact on Arizona ratepayers will be infinitesimal and finite, but its benefits in addressing the costs caused by the coal plants and their early closures are monumental.

2. Continue Developing a Record Related to CCT for Other Affected Communities.

Consideration of CCTs for communities other than the Nation may require more time than the Navajo CCT. The Generic Docket has begun receiving information from other affected communities, but unlike the Navajo CCT, it is likely that additional consideration of the issues affecting those communities and the local effects of the utilities may be desirable. The Joint Advocates are not opposing relief for non-Navajo communities—far from it. However, the Navajo CCT sits uniquely because the Commission and its Staff have hundreds, if not thousands, of pages of filings related to the Navajo CCT; parties have had the opportunity to cross-examine witnesses related to the Navajo CCT; and testimony on the Navajo CCT has been offered under oath by numerous parties. Most of the other communities considered in the Generic Docket have not yet gone through such exhaustive processes.

Numerous stakeholders identified potential areas for transition relief, but the workshops have suggested that parties need additional time to measure the appropriate amount of relief for non-Navajo CCT. At various points, conversations outside of the Navajo CCT have included topics ranging from regional availability of housing to rail and highway system expansion. These issues warrant consideration and may warrant CCT relief. However, again, they are quite distinguishable from the Navajo CCT because the amounts are not set and there is not a consistent nexus between the issue and the coal power plants which are at the heart of the Navajo CCT.

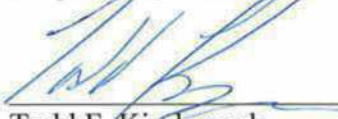
The Commission is still receiving information regarding the non-Navajo CCTs and still has public meetings scheduled around the State. In order for the Commission to incorporate any learnings from these public meetings, the timeline for their consideration needs to reach beyond May 2022. By comparison, the Navajo CCT has been subject to days of publicly accessible hearings, examination by interested parties and by the Commissioners themselves. This further highlights the appropriateness of bifurcating the Navajo CCT from more general discussion.

¹³ Cf. Decision No. 78317 at 145 (discussing renewable energy commitments).

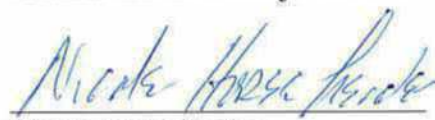
3. Conclusion

The Joint Advocates appreciate the time that the Commission and Staff have devoted to the CCT issue and recognize that work remains to be done. Because of the many hours and reams of documents devoted to the Nation's CCT in proceedings prior to this Generic Docket as well as within it, the Nation's CCT has been more than adequately examined and should be promptly approved in full.

Respectfully Submitted,

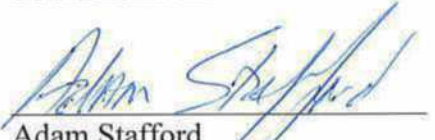


Todd F. Kimbrough
Counsel for the Navajo Nation



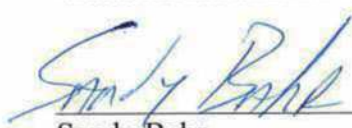
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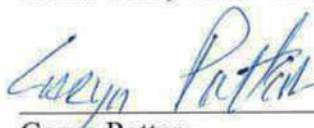
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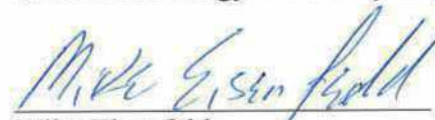
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Representing Black Mesa Trust

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Eric Frankowski
Executive Director
Western Clean Energy Campaign

Attachment: *The Navajo Nation's Comments Related to Commissioner Questions*, Apr. 20, 2022.

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IN THE MATTER OF IMPACT OF THE
CLOSURES OF FOSSIL-BASED
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DOCKET NO. E-00000A-21-0010

**THE NAVAJO NATION'S
COMMENTS RELATED TO
COMMISSIONER QUESTIONS**

At the February 2, 2022, Special Open Meeting for this Generic Proceeding, Chairwoman Márquez Peterson asked the Navajo Nation ("Nation") to identify ways that Coal Community Transition ("CCT") funds might be used in response to the unexpected and largely unmitigated effects of early coal plant closures on and near the Nation. The list below is preliminary and may evolve, but each item has a clear and direct relationship with the Commission-approved coal plants that are included in regulated rates and which are on or near the Nation and to their early retirement. In addition to the specific projects listed below, the CCT also may be used to mitigate the effects of lost tax base and other revenues resulting from the early retirement of the coal plants on and near the Nation. Given the Commission's findings that the early retirement of these coal plants and the associated regulatory assets for utilities is prudent and in the public interest, logic requires that costs (including these CCT costs) flowing to the Nation as a result of the early retirement also be found prudent and be recoverable in rates.

On February 25, 2022, Chairwoman Márquez Peterson also filed a list of topics for consideration and questions related to the scope and breadth of the CCT. These comments

1 address some, but not all, of those questions. In particular, the Nation would note that the scope
2 of the CCT does not include broader social justice questions or costs caused by entities that are
3 not subject to Commission regulation. Consequently, issues caused by third parties are outside
4 of the CCT. The CCT relates to the costs caused by the early retirement of coal-fired power
5 plants that have been historically included in the rate base of utilities regulated by the
6 Commission and the mitigation measures that have become necessary because of those early
7 retirements. This is true for tribal and non-tribal regions alike. The Nation and Arizona Public
8 Service Company ("APS") have reached an agreement regarding the CCT related to operations
9 on and around the Nation, and the Nation hopes for similar coordination with Tucson Electric
10 Power Company ("TEP") in the future. Because the APS agreement already exists and its
11 contents are known, the below list of potential areas for CCT funds focuses on APS-related CCT
12 issues. However, the Nation anticipates that a future TEP CCT plan would have similar areas
13 for focus.
14

15 The Commission has approved utility recovery of a regulatory asset associated with the
16 early retirement of the relevant coal plants because it has concluded that lower cost power can
17 be provided from alternative generation and fuel options.¹ Recovery on such a regulatory asset
18 can occur concurrently with the addition of new, replacement generating capacity; the regulatory
19 asset creates an expense that is included in Commission-approved retail electricity rates that the
20 Commission has found just and reasonable.² The CCT strongly resembles this type of regulatory
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23
24 ¹ See, e.g., ACC Decision No. 78317 at 411 (related to the next APS IRP and retirement of Four Corners Power
25 Plant); *id.* at 113-14 (noting role of natural gas prices on resource planning and plant dispatch).

26 ² See Ariz. Const. Art. 15, § 12 ("All charges made for service rendered, or to be rendered, by public service
27 corporations within this state shall be just and reasonable, and no discrimination in charges, service, or facilities
shall be made between persons or places for rendering a like and contemporaneous service.").

1 asset. It is a direct byproduct of costs caused by the early retirement decision—just like the
2 regulatory asset. It relates to the utilities’ plants and not to exogenous matters—just like the
3 regulatory asset. Its inclusion in rates is consistent with the Commission’s Constitutional
4 authority to making orders respecting public health and safety³—just like the regulatory asset.⁴
5 Because the CCT costs relate to utility activities for the generation and delivery of retail
6 electricity service in Arizona, like the regulatory asset for accelerated plant retirement, the
7 Commission should treat it as such and include it as an appropriate cost in the assessment of just
8 and reasonable rates.
9

10 **I. POTENTIAL FOCUS AREAS FOR CCT FUNDS**

- 11 • **Redevelopment of the Navajo Generating Station (“NGS”) and Four Corners
12 Power Plant (“FCPP”) Power Plant Sites.**

13 As the Commission Staff recognized in its January 28, 2022 proposed order, which the
14 Commission approved on February 8, 2022, redevelopment issues associated with former
15 generation sites fit within the Commission’s jurisdiction. In fact, the adopted proposed order
16 devotes an entire Policy Task Force subgroup to this topic.⁵ The power plants sit on land
17 belonging to, or in the vicinity of, the Nation as a landowner and as a government, consequently
18 the Nation incurs costs as a result of the early retirement/demolition of these plants. These costs
19

20
21 ³ See Ariz. Const. Art. 15, § 3; *Ariz. Corp. Comm’n v. Palm Springs Util. Co.*, 24 Ariz. App. 124 (Ariz. Ct. App.
22 1975) (stating that “the regulatory powers of the Commission” under the permissive clause “are not limited to
23 making orders respecting the health and safety, but also include the power to make orders respecting comfort,
convenience, adequacy[,] and reasonableness of service.”).

24 ⁴ See ACC Decision No. 78317 at 139 (describing the public health and safety harms, *e.g.*, carbon dioxide emissions,
etc., created by the ongoing operation of Navajo Generating Station). See also, *id.* at 428, 430 (Conclusion of Law
25 No. 2 states, “[t]he Commission has jurisdiction over APS, over the subject matter of its application as amended,
26 and over the issues raised and resolved herein.” As an interim measure, consistent with the Conclusion of Law No.
2, the Commission ordered APS to collect from rates a portion of the CCT agreed upon between APS and the
Nation).

27 ⁵ See Proposed Order at 7.

1 are separate and in addition to the costs of plant decommissioning that the Commission has
2 already allowed in rates. But, like decommissioning, these investments will be incurred in an
3 effort to make the areas on and around the retired Commission-approved plants useful, instead
4 of leaving them economically abandoned and derelict. For example, the plant sites do not have
5 electric distribution facilities or local distribution for natural gas and the water infrastructure
6 likely cannot be repurposed for the future without investment. The Nation would anticipate that
7 some amount of the CCT funds could be used to render NGS and FCPP sites used and useful in
8 some new way following the early retirements.
9

10 • **Navajo Nation-Incurred Costs Associated with the Early Decommissioning of Coal**
11 **Plants.**

12 While the utilities have recovered decommissioning funds for the retiring coal plants in
13 Commission-approved rates for years and the utilities are required to meet bare minimums in
14 decommissioning, those legal minimums do not make former power plant sites useable for all
15 purposes. The Nation anticipates that CCT funds could be used to further remediate
16 environmental issues created by decades of Commission-approved coal-fueled generation in
17 order to make the sites useable for activities other than the generation of power. If left unutilized
18 or underutilized after the utilities complete the minimum thresholds for decommissioning, a site
19 cannot offer the economic benefit of an operating power plant or even the lesser economic benefit
20 of functioning as a site for other commercial or industrial enterprises. Potential Nation-incurred
21 decommissioning spending is driven by a need to offset the early removal of rate-based coal
22 plants from Commission-approved rate base; the link to cost of service ratemaking is irrefutable.
23

24 • **Assistance for Workers Displaced by the Decision to Close the Plants Early.**

25 While the Nation has been able to negotiate a CCT agreement with APS that includes a
26 commitment by APS to offer new jobs to Navajo who worked at the retiring plants, those jobs
27

1 often require relocation. For those able to relocate to new APS positions, the retraining and
2 career changes are embedded in the utility's current cost of service. However, for many Navajos,
3 relocation is not a viable option. For example, there may be familial duties or other reasons that
4 make a move impossible. The Nation is examining use of a portion of the CCT funds to help
5 these individuals and others directly affected by the Commission-approved early retirement of
6 the coal plants, including job retraining and assistance in seeking new jobs.⁶ A ratepayer-funded
7 CCT would address the worker displacement issue for those who cannot relocate, just as the
8 existing utility cost of service will address the worker displacement issue for Navajo who can
9 practically relocate with APS.
10

11 Unfortunately, the early closure of the coal-fired power plants increases unemployment
12 around the plant sites, which creates additional expenses for the Nation. As explained by
13 Headwaters Economics,⁷ an independent, nonprofit research group:
14

15 A community's vulnerability to risk of a plant closure (or the departure of
16 any large employer) is correlated with several characteristics: the degree
17 of isolation from metropolitan and global markets (measured as travel time
18 to cities with populations more than 50,000), and the level of education
19 (measured as the percent of the adult population without a college degree).

20 These characteristics may point to places where the retiring coal-fired
21 plant play an out-sized role in the local and regional economy, where there
22 are relatively few other job opportunities for laid-off workers, and where
23 it may be more difficult to attract and grow other types of jobs, particularly
24 those that rely on advanced education.⁸

25 ⁶ See, e.g., Susan Caminiti, *AT&T's \$1 Billion Gambit: Retraining Nearly Half its Workforce for Jobs of the Future*,
26 (Mar. 13, 2018) available at <https://www.cnbc.com/amp/2018/03/13/atts-1-billion-gambit-retraining-nearly-half-its-workforce.html> (Retraining one-half (½) of AT&T's 250,000 employees estimated to cost \$1 billion—
27 approximately \$8,000 per person).

⁷ Headwaters Economics is an independent, nonprofit research group funded by the Bureau of Land Management,
U.S. Forest Service, and various charities.

⁸ Mark Haggerty, *Communities at Risk from Closing Coal Plants*, Headwaters Economics, Mar. 2017, available at
<https://headwaterseconomics.org/energy/coal/communities-coal-plant-closures/>.

1 As noted in the APS rate case, the retiring coal plants are far from metropolitan areas and
2 educational attainment in the regions is limited. In other words, the areas in and around the
3 Nation where the early retirements are occurring are exactly the types of locations that
4 Headwaters Economics identified as economically vulnerable when a utility retires its coal-fired
5 plants early.

6 Increases in unemployment due to the early Commission-regulated plant closures create
7 new costs for the Nation. These increased costs come in various forms, including increased costs
8 related to the health and safety of the displaced workers. Sadly, this includes increased mental
9 health and chemical dependence issues.⁹ As a government, the Nation helps provide healthcare
10 and public safety and is exposed to the increased burden on its systems caused by increases in
11 unemployment brought on by the early retirement of rate-based coal power plants.¹⁰

12
13 • **Repurpose Abandoned Water Pumps at NGS for Delivery of Water to Local**
14 **Population**

15 With the early retirement of NGS, water pumps that once supplied water to the coal plants
16 will remain on-site. Rather than have these pieces of equipment demolished, the Nation is
17 examining the repurposing of the pumps that once were in rate base (and presumably are part of
18 the current regulatory asset) to improve the availability of potable water in the area. The pumps
19 could be used to deliver water in which the Nation has the right to use through a pipeline system
20

21
22 ⁹ See Alejandro Badel, Brian Greaney, *Exploring the Link between Drug Use and Job Status in the U.S.*, Federal
23 Reserve Bank of St. Louis, July 2013, available at <https://www.stlouisfed.org/publications/regional-economist/july-2013/exploring-the-link-between-drug-use-and-job-status-in-the-us> (Illegal drug use is more than twice as likely
24 among the unemployed than the employed. The Federal Reserve study identified a likely causal effect of unemployment on drug abuse).

25 ¹⁰ Cf. Ariz. Const. art. 15, § 3; *Ariz. Corp. Comm'n v. Palm Springs Util. Co.*, 24 Ariz. App. 124 (Ariz. Ct. App.
26 1975) (stating that “the regulatory powers of the Commission” under the permissive clause “are not limited to
27 making orders respecting the health and safety, but also include the power to make orders respecting comfort,
convenience, adequacy[,] and reasonableness of service.”).

1 for the area's use. As noted in the APS rate case, access to water on the Nation is limited. Since
2 the time of the filing in the APS rate case, the Urban Institute, in 2020, estimated that
3 approximately one-third (1/3) of the Nation does not have access to running water or indoor
4 plumbing facilities.¹¹ The lack of access to water directly affects public health and the ability to
5 develop the local economy. This contemplated Western Navajo Pipeline project around NGS
6 may cost \$100 million itself. Again, the Commission's permissive jurisdiction clearly includes
7 authority to approve plans that promote health and safety.¹² Water's role in promoting in
8 promoting health and safety is obvious and irrefutable—it is literally essential for life. As noted
9 in previous workshops, there is no risk that the funds in the APS-Nation CCT agreement will
10 exceed the need associated with the early plant retirements.
11

12 The above list of areas for investment highlight the interplay between rate-based utility
13 assets, the early retirements, and the Nation's planned CCT actions. It also highlights the ways
14 that the CCT can promote the public interest in a manner consistent with the Commission's
15 mandate.
16

17 **II. ROLE OF THE COMMISSION-APPROVED CCT**

18 The Nation believes that the CCT should be focused on the costs and effects of
19 Commission-regulated utilities and their rate-based coal plants on the communities where those
20 coal plants were sited. The CCT should not be viewed as a broader tool of social justice or as
21 relating solely to Native American tribes. While the Nation has been disproportionately affected
22 by the early retirement of coal plants, communities like Springerville also are affected and
23
24

25 ¹¹ Amanda Gold and Jessica Shakesprere, *Four Ways to Improve Water Access in Navajo Nation during COVID-*
26 *19*, Urban Institute, available at [https://www.urban.org/urban-wire/four-ways-improve-water-access-navajo-nation-](https://www.urban.org/urban-wire/four-ways-improve-water-access-navajo-nation-during-covid-19)
during-covid-19.

27 ¹² See Ariz. Const. art. 15, § 3; *Ariz. Corp. Comm'n*, 24 Ariz. App. 124 (Ariz. Ct. App. 1975).

1 obviously are not near the Nation. The Commission's treatment of CCT should recognize the
2 costs inflicted on these communities by the early power plant retirements, consistent with
3 traditional cost of service principles.

4 Likewise, the Nation is not asking the Commission's approval of the CCT to include
5 issues associated with entities that the Commission does not regulate. For example, issues related
6 to third-party mining companies do not need to be addressed by the CCT. The CCT relates to
7 the electric utilities that the Commission regulates and to rates over which the Commission (and
8 no one else) has exclusive jurisdiction.
9

10 A. The Commission's Authority Over Ratemaking Is Extremely Broad and Cannot be
11 Delegated to Another Branch of Government.

12 In 2020, the Arizona Supreme Court explained the unique authority that the Commission
13 has over rates charged by electric utilities.¹³ The Arizona Supreme Court has concluded that the
14 "Commission's ratemaking authority under article 15, section 3 [of the Arizona Constitution] is
15 plenary."¹⁴ "[T]he Commission has 'full power' to prescribe rules, regulations, and orders
16 governing PSC rates, charges, and classifications."¹⁵ "[T]he Arizona Constitution, by its terms,
17 makes ratemaking the exclusive responsibility of the Commission; it cannot delegate this
18 authority to another agency or branch of government."¹⁶ Because the Commission has exclusive
19 and plenary jurisdiction over rates, no other party or branch of government may approve rates
20
21
22

23
24 ¹³ See *Johnson Utils., LLC v. Ariz. Corp. Comm'n*, 468 P. 3d 1176 (Ariz. 2020).

25 ¹⁴ *Id.* at 1182.

26 ¹⁵ *Id.*

27 ¹⁶ *Id.* citing Jim Rossi, *The Brave New Path of Energy Federalism*, 95 TEX. L. REV. 399, 404 n.24 (2016) (discussing the distinction between plenary and exclusive powers).

1 with the CCT, and the Commission does not need the blessing of another branch in approving
2 rates that include the CCT.

3 The CCT's components related to rates squarely fit within the Commission's plenary
4 authority and, consistent with *Johnson Utils*, it is an authority that cannot be ceded to the
5 Legislature or anyone else. "Because the Commission's ratemaking authority is plenary and
6 (except as to towns and cities) exclusive, the legislature has no power to enact statutes prescribing
7 rates and charges, nor may it regulate the timing, procedure, or methods the Commission uses in
8 calculating rates."¹⁷ The CCT includes contributions through rates. The Legislature may not
9 "enact statutes prescribing rates and charges" related to the CCT or any other utility cost of
10 service. Similarly, the Commission in its exclusive jurisdiction already has approved
11 components of APS's CCT that required modifications to the APS tariff, *i.e.*, the modification of
12 the line extension policy and a portion of the monetary components. No entity other than the
13 Commission can approve changes to regulated utilities' tariffs and rates related to the CCT; so,
14 waiting for intervention by the Legislature or any other governmental body on these CCT
15 elements conflicts with the authority prescribed to the Commission by the Arizona Constitution.
16
17

18 B. The Rate Components of the CCT Fit Within the Cost of Service Principles that the
19 Commission Has Applied for Decades.

20 As illustrated by the examples of areas for investment of CCT funds provided in Section
21 I above, the need for the CCT relates to the adverse effects and costs created by the unanticipated
22 early retirement of rate-based coal plants that are subject to Commission regulation. Those costs
23 match with the principles of cost causation employed by the Commission for decades. Electric
24 utilities are entitled to recover costs that are not the result of imprudence, as evidenced by the
25

26
27 ¹⁷ *Id.* at 1183.

1 regulatory asset approved for the early retirement of NGS. "When setting rates for public
2 utilities, the Commission should focus on the principle that 'total revenue, including income from
3 rates and charges, should be sufficient to meet a utility's operating costs and to give the utility
4 and its stockholders a reasonable rate of return on the utility's investment.'"¹⁸

5 The CCT costs identified above result from the early retirement of the coal plants and,
6 like the regulatory asset accounts already approved for the utilities' cost recovery related to the
7 early retirement, belong in the cost of service for APS and TEP. Consistent with *Residential*
8 *Util. Consumer Office*, the CCT is an operating cost that is recoverable. The Nation asks the
9 Commission to approve the CCT and to recognize that it fits within the traditional cost of service
10 framework in a way that need not be complicated.

12 C. Even if the CCT Did Not Relate to the Commission's Ratemaking Authority, the
13 Commission has Permissive Authority to Make Orders to Approve the CCT Because It
14 Promotes Public Health and Safety.

15 The Commission has the Constitutional right to approve the CCT without a finding that
16 it is a cost of service that fits under traditional rate setting. "Under the permissive clause [of the
17 Arizona Constitution], the Commission has authority to regulate PSCs to preserve and protect
18 public health, safety, convenience, and comfort."¹⁹

19 Even if the monetary element of the CCT were not necessarily and fundamentally linked
20 to rates and the Commission's exclusive jurisdiction thereof, the examples of anticipated uses for
21 the CCT funds directly relate to the Commission's permissive authority under the Arizona
22

24 ¹⁸ *Residential Util. Consumer Office v. Ariz. Corp. Comm'n*, 199 Ariz. 588, 591 (App. 2001) quoting *Scates v.*
25 *Arizona Corp. Comm'n*, 118 Ariz. 531, 533-34, (App. 1978).

26 ¹⁹ *Johnson Utils., LLC*, 249 Ariz. At 1183, citing, Ariz. Const. art. 15, § 3; *Ariz. Corp. Comm'n v. Palm Springs*
27 *Util. Co.*, 24 Ariz. App. 124 (Ariz. Ct. App. 1975) (stating that "the regulatory powers of the Commission" under
the permissive clause "are not limited to making orders respecting the health and safety, but also include the power
to make orders respecting comfort, convenience, adequacy[,] and reasonableness of service.").

1 Constitution to make orders respecting health, safety, comfort, and convenient, adequate, and
2 reasonable service. For example, the identified CCT-related costs include needs related to
3 healthcare, access to utilities, and the safe use of the former plant sites through heightened
4 decommissioning. Each of these promote health, safety, comfort, and adequacy of service, fitting
5 perfectly with the Commission's authority as identified in *Johnson Utilities*.

6 **III. CONCLUSION**

7 The Nation appreciates the heightened attention that the Commission has placed on the
8 CCT. The costs caused by the early plant retirements need to be reimbursed to affected
9 communities, including the Nation. The CCT is not some sort of grand social program or
10 "largesse" as once alleged. It is a cost recovery mechanism that resembles others that the
11 Commission uses regularly.
12

13 Dated this 20th day of April, 2022.
14

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